

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DIANNE WALKER-HOUSTON,

Plaintiff-Appellant,

v

MERCEDES-BENZ USA, L.L.C. and ESTATE  
MOTORS, LTD d/b/a MERCEDES-BENZ OF  
BLOOMFIELD HILLS,

Defendants-Appellees.

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UNPUBLISHED  
November 25, 2014

No. 317307  
Oakland Circuit Court  
LC No. 2012-128958-NZ

Before: O'CONNELL, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Plaintiff's action stems from her purchase of a station wagon manufactured by defendant Mercedes-Benz USA, L.L.C. and sold by defendant Estate Motors, Ltd. Plaintiff now appeals as of right from the trial court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10) and the trial court order denying her motion for reconsideration. We affirm.

In August 2006, plaintiff purchased a station wagon from defendant Estate Motors. Plaintiff quickly realized that when the car was in "wagon mode," the front passenger seat was unable to adjust. According to plaintiff, when the vehicle is in "wagon mode," the amount of room for a passenger is too small. Since purchasing the vehicle, plaintiff complained about this issue to several Mercedes-Benz dealerships and placed several calls to defendant Mercedes-Benz USA's call center. Plaintiff was informed multiple times that the vehicle could not be fixed or repaired because the vehicle was operating as designed. In August 2012, plaintiff filed a complaint against defendants for breach of contract, breach of warranty, and violation of Michigan's lemon law, MCL 257.1401 *et seq.*<sup>1</sup> At the time of the filing, plaintiff still owned and drove the vehicle. Defendants filed a motion for summary disposition, which the trial court

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<sup>1</sup> Plaintiff's initial complaint also alleges a violation of Michigan's Consumer Protection Act, MCL 445.901 *et seq.* However, plaintiff has not appealed the grant of summary disposition on this count.

granted. Plaintiff subsequently filed a motion for reconsideration, which the trial court denied. Plaintiff now appeals.

As an initial matter we note that neither plaintiff nor any attorney on her behalf filed a written response to defendants' motion for summary disposition or appeared at the hearing on that motion. Prior to the date set for the hearing, plaintiff's counsel withdrew from the case with the permission of the trial court. Thus, the issues argued on appeal were raised for the first time in plaintiff's motion for reconsideration. "Where an issue is first presented in a motion for reconsideration, it is not properly preserved." *Vushaj v Farm Bureau Gen Ins Co of Mich*, 284 Mich App 513, 519; 773 NW2d 758 (2009). Therefore, plaintiff's claims are unpreserved. However, we may review an unpreserved issue if the question is one of law concerning which the necessary facts have been presented. *Duffy v Dep't of Natural Resources*, 490 Mich 198, 209 n 3; 805 NW2d 399 (2011).

Plaintiff first argues that the trial court erred in granting defendants' motion for summary disposition. In her complaint, plaintiff stated a claim for breach of contract, breach of warranty, and violation of MCL 257.1402, Michigan's lemon law statute. According to plaintiff, the trial court erred when it dismissed her complaint because the statute of limitations expired; the statute of limitations was equitably tolled. We disagree.

A trial court's ruling on a motion for summary disposition presents a question of law subject to de novo review. *Titan Ins Co v Hyten*, 491 Mich 547, 553; 817 NW2d 562 (2012). A motion under MCR 2.116(C)(8) "tests the legal sufficiency of the pleadings alone." *Nuculovic v Hill*, 287 Mich App 58, 61; 783 NW2d 124 (2010). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 29; 772 NW2d 801 (2009). In a motion under MCR 2.116(C)(10), the court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted or filed in the action to determine whether a genuine issue of any material fact exists to warrant a trial. *Spiek v Michigan Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). Additionally, whether a claim is barred by a statute of limitations is reviewed de novo. *Scherer v Hellstrom*, 270 Mich App 458, 461; 716 NW2d 307 (2006).

The trial court properly granted defendants' motion for summary disposition because plaintiff's claims were barred by the statute of limitations. The Uniform Commercial Code (UCC) provides that "[a]n action for breach of any contract for sale must be commenced within 4 years after the cause of action has accrued." MCL 440.2725(1). Plaintiff does not argue that the statute of limitations was not four years. Plaintiff only contends that the statute of limitations was equitable tolled in this case.

"[T]he doctrine of equitable estoppel is a judicially-created exception to the general rule that statutes of limitation run without interruption." *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263, 270; 562 NW2d 648 (1997). For equitable estoppel to apply, plaintiff must establish:

- (1) defendant's acts or representations induced plaintiff to believe that the limitations period clause would not be enforced, (2) plaintiff justifiably relied on this belief, and (3) she was prejudiced as a result of her reliance on her belief that

the clause would not be enforced. [*McDonald v Farm Bureau Ins Co*, 480 Mich 191, 204-205; 747 NW2d 811 (2008).]

This Court is “reluctant to recognize an estoppel absent intentional *or negligent* conduct designed to induce a plaintiff to refrain from bringing a timely action.” *Cincinnati Ins*, 454 Mich at 270 (emphasis in original).

Specifically, plaintiff asserts that defendants’ acts and omissions caused plaintiff to rely on defendants to solve her complaint, and frustrated her attempt to resolve her complaint before coming to court. However, there is no indication that defendants made any type of assurances to plaintiff that would give her reason to delay bringing suit. Plaintiff knew of her concern regarding her station wagon in 2006. Plaintiff made contact directly with defendant Mercedes-Benz USA’s call center and several dealerships, including defendant Estate Motors, none of which offered her any assurances that her concern about the vehicle would be remedied. Plaintiff was consistently told that the vehicle was operating according to its design. Therefore, plaintiff cannot show that her claim was equitably tolled, and, thus, the trial court did not err in granting defendants’ motion for summary disposition because plaintiff’s claim was barred by the statute of limitations. Because plaintiff’s claims are barred by the statute of limitations, we need not address the merits of plaintiff’s claims for breach of contract, breach of warranty, and violation of Michigan lemon law. However, we note that these claims were reviewed and also found to lack merit.

Plaintiff next argues that the trial court erred in denying her motion for reconsideration. We disagree. We review a trial court’s ruling on a motion for reconsideration for an abuse of discretion. *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009). An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes. *Id.* at 605-606. MCR 2.119(F) provides that for a motion for reconsideration to be granted, “The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.” MCR 2.119(F). Here, we do not find that the trial court abused its discretion because plaintiff did not show palpable error.

Plaintiff first asserts that she should have been permitted to amend her pleadings to include claims of misrepresentation and a design defect negligence claim. MCR 2.116(I)(5) provides that “If the grounds asserted [for summary disposition] are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified.” MCR 2.116(I)(5). “Leave to amend should be denied only for particularized reasons, such as undue delay, bad faith or dilatory motive on the movant’s part, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party, or *where amendment would be futile.*” *Miller v Chapman Contracting*, 477 Mich 102, 105; 730 NW2d 462 (2007) (emphasis added). Here, any amendment by plaintiff would be futile. The statute of limitations for tort claims is three years and plaintiff’s tort claims would be time barred. MCL 600.5805(10). As discussed *supra*, equitable tolling is not applicable to this case. Therefore, the amendment would not be justified because it was futile. MCR 2.116(I)(5); *Miller*, 477 Mich at 105.

Second, plaintiff asserts that the trial court abused its discretion because it prejudiced plaintiff's rights as a pro se litigant. Specifically, plaintiff asserts that the trial court erred in maintaining the court dates in this case after plaintiff's attorney withdrew. According to plaintiff, the trial court should have ensured that she was informed of all court dates and deadlines. Plaintiff has failed to cite any controlling authority that the trial court owes a pro se litigant an obligation to inform of impending deadlines. "An appellant may not state a position without citing authority and expect this Court to search for grounds to support the claim." *Prentis Family Foundation, Inc v Barbara Ann Karamanos Cancer Institute*, 266 Mich App 39, 56; 698 NW2d 900 (2005). Moreover, plaintiff does not assert that service for defendants' motion for summary disposition or notice of hearing for that motion was improper. Therefore, plaintiff showed no palpable error justifying reconsideration. The trial court properly denied plaintiff's motion for reconsideration.

Affirmed. Defendants, the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Peter D. O'Connell  
/s/ Mark J. Cavanagh  
/s/ Karen M. Fort Hood